

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BILLY TYLER,

)

8:16CV49

)

Petitioner,

)

)

v.

)

**MEMORANDUM
AND ORDER**

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STATE OF NEBRASKA,

)

)

Respondent.

)

This matter is before the court on Petitioner Billy Tyler's Notice of Appeal (Filing No. [5](#)) and Motion for Leave to Appeal in Forma Pauperis (Filing No. [6](#)). For the reasons set forth below, the court finds that pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#), Tyler may not take this appeal in forma pauperis.

A litigant seeking to appeal a judgment must either pay the required filing fees, *see* [Fed. R. App. P. 3\(e\)](#), or proceed in forma pauperis pursuant to § 1915(a). Section 1915(a)(3) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." An appellant demonstrates good faith by seeking appellate review of any issue that is not frivolous. [Coppedge v. United States](#), 369 U.S. 438, 445 (1962); [Ellis v. United States](#), 356 U.S. 674, 674 (1958).

An appeal is frivolous when none of the legal points are arguable on their merit. *See* [Neitzke v. Williams](#), 490 U.S. 319, 325 (1989); [Misischia v. St. John's Mercy Health Sys.](#), 457 F.3d 800, 806 (8th Cir. 2006). And while such a finding should be made only in extreme cases, it is proper when a party attempts to appeal from an order that is clearly not appealable. *See* [Cohen v. Curtis Publ'g Co.](#), 333 F.2d 974, 978-79 (8th Cir. 1964).

The order from which Tyler is attempting to appeal—the court’s order on initial review (Filing No. [4](#)) dated February 3, 2016—is clearly not appealable. The order does not qualify as a “final decision[.]” capable of appeal under [28 U.S.C. § 1291](#). In addition, the order does not fall within the narrow class of appealable interlocutory orders under [§ 1292\(a\)](#).

Because Tyler is attempting to appeal from an order that is not appealable, the court certifies that the appeal is not taken in good faith.

IT IS THEREFORE ORDERED that:

1. Tyler’s Motion for Leave to Appeal in Forma Pauperis (Filing No. [6](#)) is denied.
2. The clerk of the court is directed to provide a copy of this Memorandum and Order to the Eighth Circuit Court of Appeals.

DATED this 16th day of February, 2016.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge